

# CR TONEPOHL PLUMBING AND HEATING LTD CONDITIONS OF BUSINESS

## Notice of the Right to Cancel

1. The Customer has the right to cancel the Agreement by personally delivering or sending (including by electronic mail) the cancellation notice attached to the Quote at any time within 14 days starting with the date of receipt by the Customer of this notice ("Cancellation Period");
2. The notice of cancellation is deemed to be served as soon as it is posted or sent to the Contractor or in the event of use of electronic mail the day it is sent to the Contractor;
3. The Customer may use the detachable slip attached to the Quote to cancel the Agreement within the Cancellation Period; and
4. The Customer may use the detachable slip attached to the Quote to consent to the commencement of the Agreement prior to the expiry of the Cancellation Period. The Customer shall be required to pay for the Goods and/or Services supplied prior to the issue of the Cancellation Notice attached to the Quote prior to the expiry of the Cancellation Period.

## 1. Definitions

1.1 In this Agreement the following words have the following meanings:

- "Agreement"** means the agreement between the Customer and the Contractor as described in these terms of business and the Quote;
- "Contractor"** means the individual or company who is to provide the Services to the Customer;
- "Customer"** means the person(s) who purchase the Services from the Contractor;
- "Goods"** means as described in the Quote and all incidental materials used for the carrying out of the Services;
- "Normal Working Hours"** means between the hours of 8 am and 5 pm, Monday to Friday and excluding Bank Holidays;
- "Quote"** means documentation issued by the Contractor that sets out the Services;
- "Regulations"** means the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2014;
- "Services"** means the works as described in the Quote.

## 2. Quote and Price

- 2.1 The price for the Services and the Goods shall be quoted in the Quote and shall be exclusive of any value added tax.
- 2.2 The Quote may be accepted at any time within a period of 90 days from the date of Quote and, if not accepted within such a period, shall lapse.
- 2.3 Unless otherwise stated, the Quote does not cover any work by other trades. If work by other trades is specified within the Quote, the Contractor reserves the right to nominate sub-contractors to effect the same at its discretion.
- 2.4 The Contractor warrants that:
  - 2.4.1 all necessary licences, authorities or planning permissions, including the consent of the landlord have been obtained and any costs involved met by the Customer;
  - 2.4.2 unrestricted access to any premises will be given by the Customer to the Contractor in order that the Services may be undertaken; and
  - 2.4.3 the Contractor has the use of all necessary facilities at the Customer's premises in order that the Contractor can undertake the Services.  
Any additional costs incurred by the Contractor as a result of this clause not being strictly observed, may result in an additional charge.
- 2.5 Any defects or deficiencies found in an existing building or flues or in an existing system which requires attention for the satisfactory completion of the Services or to satisfy statutory requirements and not specifically referred to in the Quote shall be the responsibility of the Customer. If the parties agree that any part or the whole of such work is to be carried out by the Contractor it shall be the subject of a separate Quote or be charged as an extra on a time and materials basis.
- 2.6 The Customer undertakes to prepare the premises or the site upon which the Services are to be performed as agreed with the Contractor before the Contractor commences the Services which, for the avoidance of doubt, includes without limitation all furniture and all floor coverings. For the avoidance of doubt, the Contractor shall not be obliged to repair or make good the premises or site upon which the Services are to be performed after completion of the Services.

## 3. Payment Terms

- 3.1 Payment of the price and VAT for the Services is due within 7 days of the date of the invoice. The Contractor will issue invoices in the stages as set out in the Quote.
- 3.2 Time for payment shall be of the essence.
- 3.3 No sums due under this Agreement shall be deemed to have been paid until the Contractor has received payment in cash or cleared funds.
- 3.4 If any sum from the Customer to the Contractor under the Agreement is not paid on or before the due date for payment then the Contractor shall be entitled to charge the Customer interest calculated on a daily basis on all overdue amounts until actual payment at the rate of eight per cent (8%) per annum above the base lending rate of the HSBC plc prevailing from time to time until payments are made in full.
- 3.5 If the Customer disputes any invoice or other statement of monies due, the Customer shall immediately notify the Contractor in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Contractor shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with clause 3.6. Where only part of an invoice is disputed (including but not limited to dispute(s) relating to third parties used to supply the Services), the undisputed amount shall be paid on the due date as set out in clause 3.1.
- 3.6 In the case of a dispute relating to any invoice issued by the Contractor relating to Goods and/or Services supplied under this Agreement the matter may be referred to an independent firm of chartered accountants agreed on by the parties, or, if agreement is not reached within five working days of either party giving notice to the other that it wishes to refer a matter to an independent firm of chartered accountants, such independent firm of chartered accountants as may be nominated by the President for the time being of the Institute of Chartered Accountants of England and Wales on the request of either party.
- 3.7 The parties are entitled to make submissions to the independent firm of chartered accountants including oral submissions and will provide (or procure that others provide) the independent firm of chartered accountants with all such assistance and documents as the independent firm of chartered accountants may reasonably require for the purpose of reaching a decision. Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause.
- 3.8 The parties agree that the independent firm of chartered accountants may in its reasonable discretion determine such other procedures to assist with the conduct of the determination as it considers appropriate, including (to the extent it considers necessary) instructing professional advisers to assist it in reaching its determination.
- 3.9 The independent firm of chartered accountants shall act as an expert and not as an arbitrator. The independent firm of chartered accountant's decision shall be final and binding on the parties in the absence of fraud or manifest error.
- 3.10 The independent firm of chartered accountant's fees and any costs properly incurred by it in arriving at its determination (including any fees and costs of any advisers appointed by the independent firm of chartered accountants) shall be borne by the parties in equal shares or in such proportions as the independent firm of chartered accountants shall direct.

## 4. Services

- 4.1 The Contractor shall make reasonable endeavours to carry out the Services within the time period stipulated in the Quote or if no time period is stipulated within a reasonable time. The time period for completion of the Services shall not be of the essence.
- 4.2 Due to changes in the design or modifications by the manufacturers of Goods or materials or through lack of availability, the Contractor may not be able to supply the equipment originally specified in the Quote. In such event the Contractor shall not be responsible for the supply of the same save that the parties may agree for the supply by the Contractor of a satisfactory and reasonable alternative item and the price shall be adjusted accordingly.
- 4.3 Unless expressly otherwise stated, where drawings are submitted with the Quote they shall be for demonstration purposes only. They should not be relied upon by the Customer and they are not prepared to specifically show the type or precise position of construction or installation.
- 4.4 The Customer warrants that any specifications they supply to the Contractor for the completion of the Services or in relation to any Goods or material to be supplied during the performance of the Services will be accurate and complete in all material respects.
- 4.5 Any drawings or designs prepared by persons other than the Contractor or any supplies and any extra work necessary caused by defects in such drawings or designs shall be charged as an extra under Clause 2.3 on a time and materials basis or be the subject of a separate Quote.

## 5. Title and Risk

- 5.1 Risk in any Goods or materials used to complete the Services shall pass to the Customer immediately upon the items being delivered to the Customer, for the avoidance of doubt, any necessary replacement Goods or materials will not be included in the Quote and the Customer will be charged an additional charge for any replacements Goods or materials.
  - 5.2 Full legal, beneficial and equitable title to and property in the Goods shall remain vested in the Contractor (even though they have been delivered and risk has been passed to the Customer) until:
    - 5.2.1 payment in full, in cash or cleared funds, for all the Goods has been received by the Contractor; and
    - 5.2.2 all other money payable by the Customer to the Contractor on any other account or under the Agreement or any other agreement has been received by the Contractor.
  - 5.3 Until full legal, beneficial and equitable title to and property in the Goods passes to the Customer:
    - 5.3.1 the Customer shall hold the Goods on a fiduciary basis as the Contractor's bailee;
    - 5.3.2 the Customer shall store the Goods at its premises in a proper manner in conditions which adequately protect and preserve the Goods and shall insure them without any charge to the Contractor; and
    - 5.3.3 the Contractor may at any time, on demand and without prior notice, require the Customer to deliver the Goods up to the Contractor and the Contractor may repossess and resell the Goods if any sum due to the Contractor from the Customer under the Agreement on any other account or under any other agreement is not paid when due.
  - 5.3.4 The Customer grants the Contractor, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated (due to non-payment or otherwise), to recover them.
  6. **Guarantees and Exclusions**
    - 6.1 Subject to Clause 6.4, the Contractor warrants that all Goods and materials supplied by him, if ordered by description and/or specification, shall correspond to that description.
    - 6.2 Subject to clause 6.4, the Contractor warrants (and subject to the other provisions of these conditions) the Services shall be performed with reasonable skill and care.
    - 6.3 Subject to Clause 6.4, the Contractor warrants that (and subject to the other provisions of these conditions) the Goods shall:
      - 6.3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
      - 6.3.2 be reasonably fit for the express purpose set out in the Quote.
    - 6.4 The Contractor shall not be held in breach of this Agreement, and shall not be liable to the Customer for any loss or damage suffered or incurred by the Customer or any other third person as a result of:
      - 6.4.1 any failure to provide the Services in accordance with this Agreement as a result of any act or omission of the Customer, which for the avoidance of doubt, includes any inaccurate or incomplete specifications; or
      - 6.4.2 any failure to provide the Services in accordance with this Agreement as a result of the Contractor's compliance with any instruction or direction given by the Customer if the Contractor has informed the Customer before it complies therewith that, in its opinion, that instruction or direction will inhibit performance of the Services; or
      - 6.4.3 the absence of any consent required to be obtained by the Customer; or
      - 6.4.4 the negligence of any consultant, professional adviser, contractors or person other than the Contractor and its sub-contractors employed by the Customer to provide the Services at the Customer's specific request; or
      - 6.4.5 any defects arising because the Customer failed to follow the Contractor's and / or manufacturer's oral or written instructions; or
    - 6.4.6 the Contractor has informed the Customer of any defects in the Goods or materials required to carry out the Services prior to them being used in the Services.
  - 6.5 The Contractor shall use its reasonable endeavors to assign the benefit of any warranty it receives in relation to the Goods from its supplier to the Customer but subject to clauses 6.1 and 6.3, the Contractor shall not be liable for any claim or claims for any damages whether direct, indirect, special or consequential or economic damage or loss arising from any breach of this Agreement or any defect(s) in the Goods..
  - 6.6 Subject to clause 6.6, if the Customer establishes to the Contractor's reasonable satisfaction that, due to the Contractor's own act or omission, the Contractor has failed to perform the Services in accordance with this Agreement, then the Contractor shall at its sole option remedy such breach:
    - 6.6.1 by re-executing the relevant part of the Services free of charge up to the amount of the contract price received by the Contractor for the provision of such Services (exclusive of any value added tax); or
    - 6.6.2 by repaying or crediting the Customer that part of the contract price paid by the Customer to the Contractor relating to the provision of the relevant part of the Services (exclusive of VAT).
  - 6.7 The Customer must notify the Contractor in writing of any claims under Clause 6 within 90 days of the date when the relevant Services were performed.
  - 6.8 Subject to clause 6.9, the Contractor shall not be liable to the Customer or any third party for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, damage to property, loss of corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
  - 6.9 Nothing in this agreement limits or excludes the liability of the Contractor for death or personal injury resulting from negligence, for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier or for any matter which it would be illegal for the Contractor to exclude or attempt to exclude its liability.
7. **Termination**
  - 7.1 Either party may immediately terminate this Agreement without payment of compensation or other damages caused to the other party solely by such termination by giving notice in writing to the other if any one or more of the following events happens:
    - 7.1.1 the other party commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
    - 7.1.2 the other party fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under this Agreement (save as to payment) after having been required in writing to remedy to desist from such breach within a period of [30] days; or
    - 7.1.3 any sum payable under this Agreement is not paid within seven days of its due date for payment in accordance with this Agreement.
8. **Consequences of Termination**
  - 8.1 On the expiry or termination of this Agreement (for whatever reason) the Contractor shall immediately upon the expiry or termination of this Agreement submit its final invoice to the Customer setting out the total amounts due to the Contractor pursuant to this agreement.
9. **General**
  - 9.1 The Contractor reserves the right to defer the commencement date of the Services or to cancel the Agreement or reduce the volume of the Goods or Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business and its obligation under the Agreement due to circumstances beyond the reasonable control of the Contractor including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event of force majeure continues for a continuous period in excess of 3 months, the Customer shall be entitled to give notice in writing to the Contractor to terminate the agreement.
  - 9.2 The Agreement sets out the entire agreement and understanding between the Customer and the Contractor in connection with the provision of the Services and Goods and shall supersede and replace all documentation previously issued by the Contractor purporting to set out its terms and conditions.
  - 9.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No other person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which Agreement must refer to this clause.
  - 9.4 If at any time one or more of the terms of the Agreement (or any sub-clause or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Agreement and the validity/ or enforceability of the remaining provision of the Agreement shall not in any way be affected or impaired as a result of that omission.
  - 9.5 The Customer shall not assign, transfer, or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of this Agreement without the prior written consent of the Contractor.
  - 9.6 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with, the laws of England.
  - 9.7 All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.